



Paper No. 21

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**OFFICE OF PETITIONS
A/C PATENTS**

ON PETITION

In re Application of
Schofield et al.
Application No. 09/227,344
Filed: January 8, 1999
Attorney Docket No. DON01 P-872

This is a decision on the petition filed July 18, 2001, which is being treated as a petition under 37 CFR 1.181 (no fee) to withdraw the holding of abandonment of the above-identified application.

The petition is **dismissed**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are **NOT** permitted. The reconsideration request should include a cover letter entitled "Renewed Petition To Withdraw the Holding of Abandonment." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to submit formal drawings and the issue fee in a timely manner in reply to the Notice of Allowability and Notice of Allowance mailed January 17, 2001. Accordingly, the above-identified application became abandoned on April 18, 2001. A Notice of Abandonment was mailed on May 23, 2001.

Petitioner contends that the Notice of Allowance, and presumably the Notice of Allowability as well, were never received at the address of record.

In the absence of any irregularity in the mailing of the Office action, there is a strong presumption that the Office action was properly mailed. In order to overcome this presumption, a petition alleging non-receipt of an Office action must:

- (1) include a statement from practitioner stating that the Office action was not received,
 - (2) attest that a search of the file jacket has been made,
 - (3) attest that a search of all relevant docket records has been made,
 - (4) include a copy of the docket record where the Office action would have been entered had it been received, and
 - (5) include any additional information which may be required by the Commissioner.
- See MPEP 711.03(c)(II).

As to (2), petitioner has failed to state that a search of the file has been made. If Fitzpatrick, Cella, Harper & Scinto, the prior law firm, possesses a file jacket for the patent then a search of that file jacket should be made.

As to (4), paragraph 3 of Howard Greenberg's declaration states, "as reflected in the attached printout from the Master Docket, our records indicate that no Notice of Allowance was received by our office." The petition is not accompanied by a copy of the relevant docket records.

Petitioner has failed to file a reply to the Notice of Allowability which required new formal drawings which comply with the January 8, 1999, Draftperson's Patent Drawing Review, a copy of which is attached. Petitioner should file new formal drawings.

The petition was treated as a petition under 37 CFR 1.181. No petition fee is due for a petition under 37 CFR 1.181. Therefore, the \$110 submitted for a petition under 37 CFR 1.137(a) will be refunded to petitioner's deposit account.

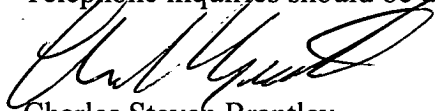
Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
Box DAC
Washington, D.C. 20231

By facsimile: (703) 308-6916
Attn: Office of Petitions

By hand: Office of Petitions
2201 South Clark Place
Crystal Plaza 4, Suite 3C23
Arlington, VA 22202

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (703) 306-5683.



Charles Steven Brantley
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Office of the Deputy Commissioner
for Patent Examination Policy

Attached: Notice of Draftperson's Patent Drawing Review